

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 724

**Introduced by Senator Dutton
(Coauthors: Senators Cannella, Correa, Huff, Rubio, and
Strickland)**

February 18, 2011

An act to amend Sections 39619.7, 43024, and 43212 of, and to add Sections 43103 and 43103.5 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 724, as amended, Dutton. State Air Resources Board: ~~penalties;~~ mobile source certification.

(1) Existing law grants to the State Air Resources Board the primary authority for the control of air pollution from vehicular sources. The state board tests and certifies new motor vehicle models for compliance with air pollution emissions standards developed by the state board.

This bill would require an application for certification of ~~a new motor vehicle or engine, including off-road equipment and engines and aftermarket parts, new, a carryover, or a partial carryover on-road or off-road vehicle, engine, or equipment family~~ to be approved or disapproved pursuant to specified requirements. The bill would authorize the executive officer of the state board to approve certification of a new motor vehicle or engine, including off-road equipment and engines and aftermarket parts, for any model year that has been certified by the federal Environmental Protection Agency without additional testing, if the state emissions standards for certification of that vehicle, equipment, engine, or part are no more stringent than the federal standards on which the federal Environmental Protection Agency certification was based

state board to approve an application for certification of a new, a carryover, or a partial carryover on-road or off-road vehicle, engine, or equipment family for any model year that has been certified by the federal Environmental Protection Agency without requiring the applicant to submit to additional testing prior to certification, if specified requirements are met.

The bill would require the state board to create a separate, short form certification application template for a ~~2013 model year and later carryover vehicle, equipment, or engine, as defined~~ *2014 model year and later carryover vehicle, equipment, or engine family and for a 2014 model year and later partial carryover vehicle, equipment, or engine family*. The bill would require ~~this~~ *these* application ~~form~~ *forms* to contain a section for the applicant to certify, under penalty of perjury, ~~that any change in an emissions-related component part has not resulted in an increase in emissions from the prior certified model year~~ *specified information*. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program.

~~(2) Existing law requires a written communication from the state board alleging that an administrative or civil penalty will be, or could be, imposed either by the state board or another party, including the Attorney General, for a violation of air pollution law, to contain specified information:~~

~~This bill would require this information to include specified information relating to quantifying excess emissions. The bill would require the state board to consider in assessing a penalty whether there were excess emissions above an applicable standard and, where practicable, to quantify these excess emissions:~~

~~(3) Existing law subjects any manufacturer or distributor who does not comply with the emission standards or the test procedures adopted by the state board to a civil penalty of \$50 for each vehicle that does not comply with the standards or procedures:~~

~~This bill would prohibit the imposition of any penalty in addition to this penalty for a violation that does not cause excess emissions above an applicable standard, including violations involving a carryover vehicle, equipment, or engine as defined:~~

~~(4)~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 43103 is added to the Health and Safety
2 Code, to read:

3 43103. (a) As used in this section and in Section 43103.5, the
4 following terms have the following meanings:

5 (1) “Carryover vehicle, engine, or equipment family” means
6 an on-road or off-road vehicle, engine, or equipment family whose
7 application for certification differs from the vehicle, engine, or
8 equipment family certified in the previous model year in model-year
9 designation only.

10 (2) “Certification” has the same meaning as in Section 39018,
11 except “certification” does not include the certification of
12 aftermarket parts or onboard diagnostic systems or equipment or
13 the verification of retrofit devices for on-road or off-road
14 heavy-duty diesel vehicles.

15 (3) “Partial carryover vehicle, engine, or equipment family”
16 means an on-road or off-road vehicle, engine, or equipment family
17 that is certified to the same emission standards and the same
18 certification category as the prior certified model year, if there
19 has been no change to the applicable emission standard and
20 requirements, including, but not limited to, durability and warranty
21 requirements, and no change in emissions performance from
22 changes to emission-related components, engine configurations,
23 calibrations, or designs, as determined by the state board. The
24 state board may adopt regulations that further define “partial
25 carryover vehicle, engine, or equipment family” for different types
26 of vehicles, engines, or equipment families.

27 (4) “Working day” means any day that is not a Saturday,
28 Sunday, or state-recognized holiday as provided in Sections 6700
29 and 6701 of the Government Code.

30 (b) (1) Within 30 working days after receipt of an application
31 for certification of a new, a carryover, or a partial carryover
32 on-road or off-road vehicle, engine, or equipment family, the state
33 board shall inform the applicant, in writing, either: (A) that the

1 application is complete and accepted for filing, or (B) that the
2 application is deficient, identifying the specific information
3 required to make the application complete.

4 (2) Within 15 working days after receipt of additional
5 information provided in response to a determination by the state
6 board that an application for certification of a new, a carryover,
7 or a partial carryover on-road or off-road vehicle, engine, or
8 equipment family, is deficient, the state board shall inform the
9 applicant, in writing, either: (A) that the new information is
10 sufficient to make the application complete and that the application
11 is accepted for filing, or (B) that the application is deficient,
12 identifying the specific information required to make the
13 application complete.

14 (3) (A) Within 90 calendar days after an application for
15 certification of a new on-road or off-road vehicle, engine, or
16 equipment family is complete and accepted for filing, the state
17 board shall approve or disapprove the application.

18 (B) If the application for certification is for a carryover vehicle,
19 engine, or equipment family, the state board shall approve or
20 disapprove the application within 30 calendar days after it deems
21 an application is complete and accepted for filing.

22 (C) If the application for certification is for a partial carryover
23 vehicle, engine, or equipment family, the state board shall approve
24 or disapprove the application within 60 calendar days after the
25 application is complete and accepted for filing.

26 (c) The state board may, in the course of processing the
27 application, request the applicant to clarify, amplify, correct, or
28 otherwise supplement the information required for the application.
29 If the state board determines that more information is needed after
30 the application has been deemed complete, the state board shall
31 notify the applicant and identify the specific information required.
32 The number of days the applicant takes to respond to the state
33 board with the requested information shall not be included in the
34 deadlines specified in paragraph (3) of subdivision (b).

35 (d) (1) If an applicant believes that the state board has not met
36 the requirements of subdivision (b), it may file, in writing, a
37 complaint with the ombudsman of the state board describing the
38 alleged failure of the state board to meet those requirements.

39 (2) Within 30 days of receiving a complaint from an applicant
40 pursuant to paragraph (1), the ombudsman shall determine whether

1 *the requirements of subdivision (b) have or have not been met. If*
2 *the requirements have not been met and the application is complete*
3 *and accepted for filing, the ombudsman shall notify the executive*
4 *officer and the executive officer shall ensure that action to approve*
5 *or disapprove the application takes place within 30 days of*
6 *determining that the requirements have not been met.*

7 *(e) (1) If an application for certification was filed prior to*
8 *January 1, 2012 for a new, carryover, or partial carryover on-road*
9 *or off-road vehicle, engine, or equipment family and the vehicle,*
10 *engine, or equipment family is for the 2012 model year, the state*
11 *board shall notify the applicant whether the application is complete*
12 *within 30 working days of January 1, 2012, and shall approve or*
13 *disapprove the application within 90 calendar days of the date the*
14 *application was deemed complete and accepted for filing.*

15 *(2) If an application for certification was filed prior to January*
16 *1, 2012 for a new, carryover, or partial carryover on-road or*
17 *off-road vehicle, engine, or equipment family and the vehicle,*
18 *engine, or equipment family was for the 2011 model year or earlier,*
19 *the state board may disapprove the application. If the state board*
20 *disapproves an application, the state board shall notify the*
21 *applicant in writing of that fact.*

22 *(f) By July 1, 2012, the state board shall create a separate, short*
23 *form certification application template for a 2014 model year and*
24 *later carryover vehicle, equipment, or engine family that shall*
25 *include, but is not limited to, all of the following:*

26 *(1) A conspicuously located section for the applicant to indicate*
27 *that the application is being submitted for a carryover vehicle,*
28 *equipment, or engine family.*

29 *(2) A conspicuously located section for the applicant to certify,*
30 *under penalty of perjury, that there are no changes in the vehicle,*
31 *equipment, or engine family from the prior certified model year.*

32 *(3) The state board may request the applicant to provide*
33 *additional information as needed to complete its review of an*
34 *application.*

35 *(g) By July 1, 2012, the state board shall create a separate,*
36 *short form certification application template for a 2014 model*
37 *year and later partial carryover vehicle, equipment, or engine*
38 *family that shall include, but is not limited to, all of the following:*

1 (1) A conspicuously located section for the applicant to indicate
2 that the application is being submitted for a partial carryover
3 vehicle, equipment, or engine family.

4 (2) A conspicuously located section for the applicant to certify,
5 under penalty of perjury, that any change in an emissions-related
6 component part has not resulted in an increase in emissions from
7 the prior certified model year.

8 (3) A conspicuously located section for the applicant to indicate
9 and provide information for any nonmaterial or minor changes
10 from the prior certified model year, such as minor changes to
11 emissions-related component parts that do not adversely affect
12 emissions compliance or performance or otherwise result in
13 increased emissions, including, but not limited to, revised labels
14 or warranty statements, and a short statement explaining the
15 engineering judgment or rationale relied upon by the applicant in
16 making this determination.

17 (4) The state board may request the applicant to provide
18 additional information as needed to complete its review of an
19 application.

20 SEC. 2. Section 43103.5 is added to the Health and Safety
21 Code, to read:

22 43103.5. (a) The state board may, at its discretion, approve
23 an application for certification of a new, a carryover, or a partial
24 carryover on-road or off-road vehicle, engine, or equipment family
25 for any model year that has been certified by the federal
26 Environmental Protection Agency without requiring the applicant
27 to submit to additional testing prior to certification, if both of the
28 following requirements are met:

29 (1) The submitted test data and related information on which
30 federal Environmental Protection Agency certification was based
31 demonstrate compliance with state emission standards and
32 requirements, including, but not limited to, durability and warranty
33 requirements.

34 (2) The federal standards are as stringent as the state standards.

35 (b) The state board may, in the course of processing the
36 application, request the applicant to clarify, amplify, correct, or
37 otherwise supplement the information required for the application.

38 SECTION 1. ~~Section 39619.7 of the Health and Safety Code~~
39 ~~is amended to read:~~

1 39619.7. (a) A written communication from the state board
2 alleging that an administrative or civil penalty will be, or could
3 be, imposed either by the state board or another party, including
4 the Attorney General, for a violation of air pollution law, shall
5 contain a clear explanation of all of the following:

6 (1) The manner in which the administrative or civil penalty
7 amount was determined, including the aggravating and mitigating
8 factors the state board considered in arriving at the amount, and,
9 where applicable, the per unit or per vehicle basis for the penalty.

10 (2) The provision of law or regulations under which the alleged
11 violator is being assessed the administrative or civil penalty,
12 including the reason that provision is most appropriate for that
13 violation.

14 (3) (A) Whether the administrative or civil penalty is being
15 assessed under a provision of law that prohibits the emission of
16 pollution at a specified level, and if so, a quantification of the
17 specific amount of pollution emitted in excess of that level, where
18 practicable. This quantification may be based on estimates or
19 emission factors. The state board shall provide an opportunity to
20 the regulated person or entity to submit information regarding the
21 amount of pollution emitted in excess of an applicable standard
22 or the lack of any emissions above an applicable standard.

23 (B) Whether quantifying excess emissions was practicable,
24 whether a regulated person or entity submitted information
25 quantifying excess emissions, and the manner in which the penalty
26 was assessed to account for the magnitude of excess emissions or
27 the lack of excess emissions, as required by subdivision (c) of
28 Section 43024.

29 (b) The information described in subdivision (a) and all final
30 mutual settlement agreements reached between the state board and
31 a person alleged to have violated air pollution laws shall be made
32 available to the public.

33 SEC. 2. Section 43024 of the Health and Safety Code is
34 amended to read:

35 43024. (a) No later than March 1, 2011, the state board shall
36 publish a penalty policy for civil or administrative penalties
37 prescribed under Chapter 1 (commencing with Section 43000) to
38 Chapter 4 (commencing with Section 43800), inclusive, and
39 Chapter 6 (commencing with Section 44200).

- 1 ~~(b) The policy shall take into consideration all relevant~~
2 ~~circumstances, including, but not limited to, all of the following:~~
- 3 ~~(1) The extent of harm to public health, safety, and welfare~~
4 ~~caused by the violation.~~
- 5 ~~(2) The nature and persistence of the violation, including the~~
6 ~~magnitude of the excess emissions.~~
- 7 ~~(3) The compliance history of the defendant, including the~~
8 ~~frequency of past violations.~~
- 9 ~~(4) The preventive efforts taken by the defendant, including the~~
10 ~~record of maintenance and any program to ensure compliance.~~
- 11 ~~(5) The innovative nature and the magnitude of the effort~~
12 ~~required to comply, and the accuracy, reproducibility, and~~
13 ~~repeatability of the available test methods.~~
- 14 ~~(6) The efforts of the defendant to attain, or provide for,~~
15 ~~compliance.~~
- 16 ~~(7) The cooperation of the defendant during the course of the~~
17 ~~investigation and any action taken by the defendant, including the~~
18 ~~nature, extent, and time of response of any action taken to mitigate~~
19 ~~the violation.~~
- 20 ~~(8) The financial burden to the defendant.~~
- 21 ~~(c) The state board shall consider in assessing a penalty whether~~
22 ~~there were excess emissions above an applicable standard and,~~
23 ~~where practicable, the state board shall quantify these excess~~
24 ~~emissions.~~
- 25 ~~SEC. 3.—Section 43103 is added to the Health and Safety Code,~~
26 ~~to read:~~
- 27 ~~43103. (a) (1) Within 30 days after receipt of an application~~
28 ~~for certification of a new motor vehicle or engine, including~~
29 ~~off-road equipment and engines and aftermarket parts, the executive~~
30 ~~officer of the state board shall inform the applicant, in writing,~~
31 ~~either: (A) that the application is complete and accepted for filing,~~
32 ~~or (B) that the application is deficient, identifying the specific~~
33 ~~information required to make the application complete.~~
- 34 ~~(2) Within 15 days after receipt of additional information~~
35 ~~provided in response to a determination by the executive officer~~
36 ~~of the state board that an application for certification of a new~~
37 ~~motor vehicle or engine, including off-road equipment and engines~~
38 ~~and aftermarket parts, is deficient, the executive officer shall inform~~
39 ~~the applicant, in writing, either: (A) that the new information is~~
40 ~~sufficient to make the application complete and that the application~~

1 is accepted for filing, or (B) that the application is deficient,
2 identifying the specific information required to make the
3 application complete.

4 (3) Within 90 days after an application for certification of a new
5 motor vehicle or engine, including off-road equipment and engines
6 and aftermarket parts, is accepted for filing, the executive officer
7 of the state board shall act to approve or to disapprove the
8 application.

9 (b) (1) An applicant may inform the executive officer or the
10 ombudsman of the state board, in writing, if the requirements of
11 subdivision (a) have not been met.

12 (2) The executive officer and the ombudsman shall ensure that
13 action to approve or disapprove the application takes place within
14 30 days after receipt of the notice described in paragraph (1).

15 (e) (1) If the application for certification of a new motor vehicle
16 or engine, including off-road equipment and engines and
17 aftermarket parts, is for a carryover vehicle, equipment, or engine,
18 the executive officer shall approve or disapprove the application
19 within 30 days after the application is accepted for filing.

20 (2) If an application described in paragraph (1) is not approved
21 or disapproved within 210 days after the application is accepted
22 for filing, the application is deemed to have been approved by the
23 executive officer.

24 (3) For a carryover vehicle, equipment, or engine that has been
25 approved pursuant to this subdivision, the entire model year is
26 deemed to have been certified with the approval being effective
27 on the initial date when that model year began production.

28 (4) This subdivision applies to an application made on and after
29 January 1, 2012, and to an application that was filed prior to
30 January 1, 2012, and which has not yet been approved or
31 disapproved.

32 (d) The state board shall create a separate, short form
33 certification application template for a 2013 model year and later
34 carryover vehicle, equipment, or engine that shall include all of
35 the following:

36 (1) A conspicuously located section for the applicant to indicate
37 that the application is being submitted for a carryover vehicle,
38 equipment, or engine.

39 (2) A conspicuously located section for the applicant to certify,
40 under penalty of perjury, that any change in an emissions-related

1 component part has not resulted in an increase in emissions from
2 the prior certified model year.

3 ~~(3) A conspicuously located section for the applicant to indicate
4 and provide information for any nonmaterial or minor changes
5 from the prior certified model year, including, but not limited to,
6 changes in emissions-related component parts that do not adversely
7 affect emissions compliance or performance or otherwise result
8 in increased emissions, or revised labels or warranty statements.~~

9 ~~(e) As used in this section, “carryover vehicle, equipment, or
10 engine” means a vehicle, equipment, or engine certified to the
11 same emission regulations and standards as the certified prior
12 model year, if there has been no change to the subsequent model
13 year product that would increase emissions or adversely affect
14 emissions compliance or performance.~~

15 ~~SEC. 4. Section 43103.5 is added to the Health and Safety
16 Code, to read:~~

17 ~~43103.5. The executive officer of the state board may approve
18 certification of a new motor vehicle or engine, including off-road
19 equipment and engines and aftermarket parts, for any model year
20 that has been certified by the federal Environmental Protection
21 Agency, without requiring the applicant to submit to additional
22 testing prior to certification, if the state emissions standards for
23 certification of that vehicle, equipment, or engine are no more
24 stringent than the federal standards on which the federal
25 Environmental Protection Agency certification was based.~~

26 ~~SEC. 5. Section 43212 of the Health and Safety Code is
27 amended to read:~~

28 ~~43212. (a) Any manufacturer or distributor who does not
29 comply with the emission standards or the test procedures adopted
30 by the state board shall be subject to a civil penalty of fifty dollars
31 (\$50) for each vehicle that does not comply with the standards or
32 procedures and that is first sold in this state. The payment of these
33 penalties to the state board shall be a condition to the further sale
34 by the manufacturer or distributor of motor vehicles in this state.~~

35 ~~(b) Notwithstanding Section 43154 or 43211, a penalty in
36 addition to the penalty provided for in this section shall not be
37 imposed for a violation of the emission standards, certification
38 requirements, or test procedures described in this chapter, if that
39 violation does not cause excess emissions above an applicable~~

1 standard, including violations involving a “carryover vehicle,
2 equipment, or engine” as defined in Section 43103.

3 (e) Any penalty recovered pursuant to this section shall be
4 deposited into the Air Pollution Control Fund.

5 ~~SEC. 6.~~

6 *SEC. 3.* No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.